

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 OPIC-03 COME-00 SP-02 USIA-06 AID-05

EB-07 NSC-05 CIEP-01 TRSE-00 SS-15 STR-04 OMB-01

CEA-01 L-03 CIAE-00 INR-07 NSAE-00 FRB-03 XMB-02

LAB-04 SIL-01 /081 W

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R 191450Z AUG 76

FM AMEMBASSY LIMA

TO SECSTATE WASHDC 1451

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E.O. 11652: N/A

TAGS: EINV, PE

SUBJECT: CELANESE CLAIM

REF: STATE 200746, LIMA 7199, LIMA 5923

1. AS REQUESTED STATE 200746, EMBASSY POUCHING (ARA/AND/P FULLER) COPIES OF DECREE LAW 17710 OF JUNE 18, 1969, AND DECREE LAW 18275 OF MAY 15, 1970, AS WELL AS DECREE LAW 20031 OF MAY 22, 1973, WHICH MODIFIES FIRST TWO. TO EMBASSY'S KNOWLEDGE THESE ARE ONLY EXCHANGE CONTROL LAWS AND REGULATIONS RELEVANT TO CELANESE CLAIM.

2. INVESTOR IS ACCURATE IN CLAIM THAT NO FOREIGN EXCHANGE CONTROLS EXISTED AT TIME OF CONTRACT SIGNING IN DECEMBER 1966.

3. REPRESENTATIVES OF LOCAL BANKS AND SOME OF OUR CONTACTS IN U.S. BUSINESS COMMUNITY TELL US THAT DELAY IN PROFIT REMITTANCES HAS BEEN RECURRING PROBLEM. FOR EXAMPLE, LIMA 7199 REPORTED THAT U.S. MOVIE DISTRIBUTORS HAVE NOT BEEN ABLE TO OBTAIN PERMISSION TO REMIT PROFITS FOR OVER SIX MONTHS. OUR BANKING AND BUSINESS SOURCES BELIEVE PRINCIPAL CAUSE FOR DELAYS IS PERU'S FOREIGN EXCHANGE
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SHORTAGE. LEGAL ADVISOR RAYON Y CELANESE S.A. CONFIRMS

HE SHARES THIS ASSESSMENT.

4. AS OPIC AWARE, DECRETO LEY 18384 OF SEPTEMBER 1, 1970, ESTABLISHED INDUSTRIAL COMMUNITY CONCEPT WHICH INTER ALIA PROVIDES THAT 15 PERCENT OF A FIRM'S ANNUAL PROFITS BE TURNED OVER TO THE FIRM'S WORKERS IN THE FORM OF SHARES UNTIL THE WORKERS CONTROL 50 PERCENT OF THE SHARES OF THE COMPANY. THUS, CELANESE CORPORATION'S CLAIM OF REDUCTION IN INVESTMENT RESULTING FROM MANDATORY ISSUANCE OF SHARES TO FIRM'S WORKERS IS CORRECT. NORMALLY THERE IS NO RELATIONSHIP BETWEEN TURNOVER OF SHARES TO WORKERS AND INCONVERTIBILITY OF PROFITS, BUT SUCH TIE-IN COULD CONCEIVABLY DEVELOP. FOR EXAMPLE, IF A FIRM'S INDUSTRIAL COMMUNITY CHARGED THAT THE FIRM WAS ATTEMPTING TO WITHHOLD PART OF THE COMMUNITY'S SHARE OF PROFITS, WE COULD ENVISAGE A GOP EMBARGO ON PROFIT REMITTANCES UNTIL MATTER WAS RESOLVED. AS FAR AS EMBASSY CAN DETERMINE, HOWEVER, THIS IS NOT THE CASE IN CELANESE MATTER.

5. LIMA 5923 REPORTED ON JUNE 25 DEVALUATION OF SOL FROM 45:1 TO 65:1. GOP ISSUED NO LAWS, REGULATIONS, OR OTHER DOCUMENTATION IN CONNECTION WITH DEVALUATION. AS REPORTED LIMA 5923, NEW EXCHANGE RATES WERE POSTED WITHOUT COMMENT ON JULY 28, EFFECTIVE AS OF JULY 25, IN USUAL WEEKLY FOREIGN CURRENCY QUOTATION COLUMN IN OFFICIAL GAZETTE "EL PERUANO." ONLY FORMAL DOCUMENT OF WHICH EMBASSY IS AWARE IS INTERNAL IMF MEMO EBS/76/314 OF JULY 14, 1976, WHICH MENTIONS A GOP COMMUNICATION TO THE FUND ADVISING OF THE DEVALUATION.

6. FOLLOWING ARE RESPONSES TO PARA. 6, STATE 200746:

A. WHILE RUMORS OF IMPENDING DEVALUATION CIRCULATED IN LIMA SEVERAL MONTHS PRIOR TO EVENT, NO ONE COULD BE CERTAIN THAT GOVERNMENT WOULD DEVALUE UNTIL JUNE 24 WHEN CENTRAL BANK CLOSED FOREIGN EXCHANGE TRADING.

B. DESPITE CURRENT CIRCULATION OF RUMORS TO EFFECT THAT THERE WILL BE AT LEAST ONE MORE DEVALUATION BEFORE END OF YEAR, WE BELIEVE IT UNLIKELY GOP WOULD TAKE THIS LIMITED OFFICIAL USE

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STEP AGAIN SO SOON AFTER RECENT LARGE DEVALUATION. ON THE OTHER HAND, REPORTS RECEIVED BY EMBASSY IMMEDIATELY PRIOR TO ANNOUNCEMENT OF JUNE 25 DEVALUATION INDICATED POSSIBILITY THAT GOP WAS CONSIDERING MINI-DEVALUATIONS EVERY 60 DAYS AS FOLLOW-UP MEASURE. MINI-DEVALUATIONS WOULD BE TO MAINTAIN REALISTIC EXCHANGE RATE FOR SOL, RATHER THAN ALLOW RATE TO GET FAR OUT OF LINE AS HAD HAPPENED PRIOR TO DEVALUATION. SO FAR THERE HAS BEEN

NO ACTION BY GOP TO INDICATE GOVERNMENT HAS ADOPTED THIS POLICY, BUT REPORTS OF GOP CONSIDERATION OF SUCH POLICY MIGHT POINT TO ITS IMPLEMENTATION AND MAY BE CAUSE FOR CURRENT SPATE OF RUMORS. A MORE RECENT REPORT FROM LOCAL BUSINESS SOURCE WITHOUT CLOSE GOVERNMENT CONTACTS CLAIMS THAT GOP IS CONSIDERING REMOVAL OF ALL FOREIGN EXCHANGE CONTROLS.

C. EMBASSY BELIEVES 45:1 EXCHANGE RATE WOULD BE APPROPRIATE FOR REMITTANCES OF CORPORATE DIVIDEND AS OF MAY 27, 1976.

7 EMBASSY OFFICIAL WHO CAN ACT AS OPIC'S REPRESENTATIVE FOR PURPOSES OF ACCEPTING DRAFT OF SOLES INVOLVED IN INVESTOR'S CLAIM IS DEPUTY CHIEF OF ECON/COMMERCIAL SECTION, FSO HARRY L. STEIN. ACCEPTABLE DEPOSITORIES IN LIMA RE BANCO POPULAR, P.O. BOX 143, BANCO COMERCIAL, P.O. BOX 3112, AND BANCO DE LIMA, P.O. BOX 3181, ALL OF WHICH HAVE HAD WORKING RELATIONSHIP WITH RAYON Y CELANESE S.A.

8 COMMENT: AS NOTED ABOVE, PERU'S CURRENT LACK OF FOREIGN EXCHANGE HAS RESULTED IN DELAY OF PROFIT REMITTANCES FOR A NUMBER OF FOREIGN INVESTORS. OUR INQUIRIES INDICATE THAT THIS IS ALSO CAUSE OF CELANESE'S PROBLEM. FOREIGN EXCHANGE SHORTAGE ALSO PARTLY RESPONSIBLE FOR DELAY IN SETTLEMENT OF MARCONA AND GULF EXPROPRIATION CASES. WE ASSUME THAT ONCE PERU OBTAINS BOP FINANCING CURRENTLY UNDER NEGOTIATION WITH FOREIGN COMMERCIAL BANKS, REMITTANCES TO FOREIGN INVESTORS WILL RESUME, ALTHOUGH WE HAVE NO INFORMATION TO INDICATE WHICH, IF ANY, FIRMS WILL BE ON TOP OF WAITING LIST. UNTIL NEGOTIATION WITH COMMERCIAL BANKS LIMITED OFFICIAL USE

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IS COMPLETED, WE DO NOT FORESEE GOP IN A POSITION TO MOVE QUICKLY TO REDUCE BACKLOG OF REMITTANCE PAYMENTS, DESPITE CONTINUING REPRESENTATIONS WE HAVE BEEN MAKING ON BEHALF OF A NUMBER OF CLAIMANTS.
SMITH

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